TOWARDS A REVISED AND CONSOLIDATED SCHOOLS ACT

A DISCUSSION PAPER

NEW BRUNSWICK EDUCATION

JUNE 1987

Department of Education
Office of the Minister

FOREWORD

The revision and consolidation of our Schools Act is a significant undertaking.

I am pleased to provide this 'Green Paper' as a basis for a final round of discussions and consultation prior to drafting new and revised statutory provisions.

It is my hope that this document will permit balanced and thoughtful considerations of those policy matters which should be addressed through the Schools Act for the years to come.

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PART I: INTRODUCTION AND OVERVIEW

THE PURPOSE OF THIS GREEN PAPER

The purpose of this paper is to identify and discuss issues which should be taken into account during the preparation of a revised and consolidated Schools Act.

In 1985, the Government announced its intention to prepare a revised and consolidated Schools Act. Since that time, there have been three significant developments. First, substantive amendments were made to the Schools Act in 1986, in order to provide for the repeal of the Auxiliary Classes Act, and for the integration of special education programs as a part of the school system. Second, discussion notes for the revision of the Schools Act were circulated to school boards and other organizations in the education community, in order to solicit their comments. Finally, the committee on the Roles and Responsibilities of School Boards and the Department of Education, which was established subsequent to the reform process, met several times in order to review the results from that consultation process. They also discussed the issues which might be addressed in a new, revised, and consolidated Schools Act, and to prepare recommendations on this subject. Their report was presented to the Minister of Education on May 21 1987, and tabled for the information of Members of the Legislative Assembly.

This green paper is, therefore, intended to be a document which will be useful for discussing and taking decisions on issues to be addressed in a new and revised Schools Act, as a final step before drafting legislation. It addresses questions such as:

- What are the issues which need to be considered in revising and consolidating the Schools Act?
- What points of view exist as to how these issues should be resolved?
- What arguments exist in favour of or contrary to these points of view?

To the extent possible, issues have been grouped by subject.

This paper does not pretend to be exhaustive in defining all the issues which might be addressed in a revised Schools Act, or all the points of view and arguments which pertain to them. Rather, it attempts to include those matters which are substantive, and those arguments which have been advanced to date, based on the consultation and study processes already completed.

Before going on to discuss the issues which might be addressed in a revised and consolidated Schools Act, it would perhaps be useful to make some general observations about statute law, and about our Schools Act.

THE ROLE OF STATUTE LAW

Statute law is an instrument of a legislature or parliament which may serve a number of purposes. It may

enable something to be done. It may prescribe what must be done. It may include provisions to protect certain groups of society, or for the protection of society in general. It may regulate certain activities. It may declare principles or set out rights and entitlements. It may establish the organization through which particular goals are to be accomplished It may set out how certain processes are to be carried out. Finally, statute law passed annually is the legal device by which funds are provided to operate public enterprises, such as the school system.

Statute law does not exist in isolation from other law, whether or not that other law is formally codified (as in the case of the Charter of Rights or other Acts of legislatures or parliament) or not (as is the case for that body of law which is established by precedent, or which consists of fundamental rights which have come to be recognized through our court system).

Neither does statute law exist alone as a basis for setting out those rules which enable public enterprise to operate. Regulations and policy, made pursuant to and in accordance with statute law, also have a major role to play, particularly in establishing a framework to guide and enable the operation of large public sector undertakings, such as the school system.

THE NEW BRUNSWICK SCHOOLS ACT

The Schools Act of New Brunswick is a relatively short

but very important part of New Brunswick statute law. It has for many years served primarily as a device for enabling the school system to operate.

It establishes such fundamental things as who may attend school, and who must attend school. It establishes school boards as a mechanism for providing local management for education, and gives some details as to how such boards are constituted and how they carry out business. Similarly, it sets out certain powers and responsibilities for the Minister of Education. To this point in time, it has not been oriented towards prescribing in detail what shall happen in the school system, nor towards specifying comprehensively the rights and privileges of students and parents.

The consultation process which has taken place over the last several months seems to have indicated satisfaction with this orientation of our Schools Act. Therefore, this paper looks at those issues which deserve some consideration, in an effort to update and improve our present school law, and does not discuss ideas which would lead to a fundamental change in the role which our School Act fulfills.

Nonetheless, there are some potential areas for new law, particularly in regards to matters concerning students and their parents. There are also a number of issues which require some attention due to the ways in which New Brunswick society is evolving. For example, since the

current Schools Act was originally introduced, the public enterprise of education has grown in size, become the consumer of a more major share of public resources, and introduced collective bargaining. Canadians have gained a Charter of Rights, interest groups have become more active, and the courts are being seen more frequently as a place to resolve disputes. Each of these trends has its impact, when deciding what provisions need to be in school law for the immediate and medium term future.

The 'content' of schooling as alluded to earlier, our school law has traditionally had very little to say about the content of schooling. The Schools Act has not spelled out in detailed terms what we expect our schools to accomplish or how they should go about doing their job. A consideration in preparing a revision of our Schools Act is whether or not we wish to continue to see these questions, which are the essence of what happens in our school system, addressed in other ways than by statute law.

During the consultation process to date, it would appear that there is no support for the notion of having a Schools Act which is prescriptive rather than enabling in regards to these matters. Indeed, some concern was apparent that if the Schools Act were to become prescriptive, it would necessarily reflect central governmental views as to program details and curriculum content at a particular point in time, to the detriment of that flexibility which is essential at the school level if teaching professionals are

to deliver programs in ways that establish an effective balance between the acquisition of knowledge, skills and understandings which all students should have, and local circumstances and needs.

A second argument against a prescriptive Schools Act is the difficulty which may be encountered in future when educational change is essential. We do know that change in education will always be required, if education systems are to remain effective. It is also clear that existing programs or objectives develop their own constituency, which may result in the retention of programs or content far beyond their justifiable existence. Those who argue against a prescriptive Schools Act, therefore, also base their arguments on the notion that statutory provisions should not be created which in future become yet one more obstacle to necessary change.

There is, of course, another side to this argument. There are those who would suggest that prescribing the content of schooling in statute law is necessary in order to set out in binding terms what a government requires of the school system. This is based on the idea that the school system is first and foremost a public enterprise, which a government should operate on behalf of its taxpayers, in a very public way, and in a way which directly involves elected provincial representatives. However this point of view was not predominant in discussions to date. At least within the education community, there appears to be

consensus that our present law, which permits the content of education to be prescribed or approved by the Minister, works well.

AN OVERVIEW

Following this introduction and overview, there are four sections which deal with specific issues or concerns.

Parents and Students

Part II groups together discussion of a number of issues which have to do primarily with students and their parents. It responds to questions such as the following:

- What legal provisions are required to protect each student's opportunity to succeed?
- What legal provisions are required to ensure that parents may be constructively involved with their children's education?
- What are the obligations of students and parents?

To respond to these questions, this part deals with issues such as access to student records, appeals from decisions which affect the life and progress of students, parental involvement, compulsory attendance, discipline, and truancy.

School programs and access to them

Part III of this paper deals with school programs and access to them. It deals with questions such as:

- Who shall be served by our school system?

- Who must attend school?
- Which students go to which schools and districts?

This part of the paper deals, for example, with concerns which remain after the 1986 Schools Act amendments, in regards to the obligation of school boards to serve all pupils, and in regards to the integration of exceptional pupils. It discusses the linguistic organization of our school system, and the impact which this has on which children may attend which schools and programs. It discusses the question of residency as a criteria for determining where a student will attend school. It also reviews questions concerning the eligibility for free school privileges, including whether or not special provisions should be added to the Act in respect of foreign students.

School Boards and Trustees

Part IV of this paper is titled 'Serving the Students and Public Interest' and has to do primarily with school boards and school trustees. It responds to questions such as:

- How can the manner in which school trustees are selected be improved?
- Who should be eligible to be a school trustee?
- What standards should be established for how trustees individually or collectively carry out board business?

- To what extent should trustees be protected from liability?
- To what extent should consideration be given to remunerating trustees?
- Should school boards have better access to independent counsel?
- What standards of public accountability should be required of school boards by law?

This section is the one which deals with adjustments to the manner in which elections are held for school boards, and the related issue of criteria for eligibility to become a trustee. It deals with subjects such as conflict of interest, and standards for carrying out school board business. Protection and remuneration of trustees are also discussed, as well as provisions to do with the public accountability of school boards.

Employees

The final section of this paper deals with school system employees. It responds to questions such as:

- What legal provisions should exist concerning serious, non-professional conduct, such as physical or sexual abuse?
- What special provisions should be made in regards to the terms and conditions of employment of non-bargaining school board staff, particularly superintendents?

- For bargaining employees, what should remain in law, and what should be left to be settled in collective agreements?

Hopefully the organization of this paper will lend itself to consideration of these legal issues in a way that allows consensus to be obtained to the extent possible, thereby permitting the drafting of a revised and consolidated Schools Act to proceed in the immediate future.

PART II - STUDENTS AND THEIR PARENTS

A CHANGING SOCIETAL CONTEXT

New Brunswick has not been isolated from the trends of recent times.

One significant trend has been emerging expectations on the part of New Brunswick parents, who are for the most part considerably better educated than previous generations. Parents are placing new and increased demands on the school system. Parents also have changing expectations as to what their roles should be as their children pass through school. Many parents want to be treated as partners in education. They are confident of their ability to contribute.

A second, general trend in Canadian society has been a tendency towards the protection and development of individual rights and opportunities. This trend is well established, and has been reflected in the evolution of many public sector programs. In law, the Charter of Rights has entrenched fundamental freedoms and protections for the individual.

Thus it is not surprising that pressures are placed on the school system to pay more attention to the individual interests of parents and students, to protect their rights, and to allow them to be more involved in the process of education. Parents and students alike tend more and more to seek roles as active participants rather than passive consumers. There is every reason to believe that the

changing role of parents and students, coupled with the evolution of teaching as the process of helping learners learn, can work together to make the process of schooling more effective.

An undertaking such as the revision and consolidation of the Schools Act naturally brings to the forefront suggestions that provisions be added in law to confirm and strengthen these current tendencies in the evolution of our society. However the question for law makers is somewhat more complex. The ultimate test of a change to the Schools Act is whether or not it will result in a more effective school system. Although there appears to be consensus that law should give attention to ensuring equitable practices and the protection of the rights and opportunities of parents and students, it remains important to pursue these objectives in ways which do not displace efforts to ensure that schooling has effective educational results.

With this need for balance in mind, this part of the paper proceeds to deal with those areas in which there has to date been very little statute law (i.e. student records, appeals, and parental involvement) as well as some related areas such as compulsory attendance, truancy, and discipline.

STUDENT RECORDS

Currently, our Schools Act makes no direct reference to access to student records. It does not deal with the

circumstances under which they should be considered confidential, nor does it establish rights of access to them. There does, however, seem to be some consensus that these subjects should be dealt with either in or under statute law. However there consider to be somewhat diverse opinions as to the provisions which should be introduced.

Two Points of View

With regards to the right of access to or confidentiality of student records, there are two conflicting points of view.

First, there are those who insist that students and their parents should have a full and unrestricted access to student records, on the basis that a student and his or her parents have a fundamental right to know what others have recorded about them.

Second, there are those who believe that professionals working in the school system, particularly health professionals such as psychologists, should not be required to divulge their notes or records about individual students, on the basis that general access could result in information being divulged to individuals who may not be capable of using it positively.

There are merits in both positions. In the first case, each of us finds it repugnant to discover that records are kept which may influence our progress or how others think of us, when those records are not accessible to us. In some

areas of activity, guarantees have been established to eliminate these situations. Recent trends in policies about access to personnel records are a good example of this.

We are also aware of situations where the disclosure of information of an individual nature may be harmful to that individual's future. Teachers and others are familiar with the concept of a self-fulfilling prophecy; i.e. to the extent that an individual believes what others say about his or her capabilities, he or she is likely to fulfill those expectations, given the capacity to do so. This is clearly not a bad thing in regards to positive information which challenges an individual to grow, develop and learn. However negative information is somewhat more risky. It may be relatively easy for an individual to fulfill an expectation that he or she is not capable of achieving something, thus falling somewhat short of his or her developmental potential. There are also some kinds of information which do require a professional interpretation if they are to be used with constructive results. This is particularly true in regards to psychological information.

There are a number of courses of action which could be taken in law. One could, for example, establish a fundamental right of access to student records and information about students, dealing with difficulties of administration as they arise. One could also establish which categories of information should normally remain confidential, and continue to have no legal provisions

concerning other information. One could also decide that the issue was sufficiently complex that the most prudent course of action was to avoid making any legislative proposals about it.

None of the above suggestions are particularly helpful. The first two would merely be responses to satisfy one particular point of view about access to student records. The third avoids dealing with the issue.

The concept of informed access

Another proposal, which is perhaps more worthy of debate, is to establish a right of 'informed access' as explained in the following paragraphs.[1]

The concept of 'informed access' rests on the notion that when a person is given access to documents, he or she should also be informed as to their contents, possible interpretations, and potential use, with a view to maximizing the chance that the information will be positively used. The suggestion that the concept of 'informed access' be applied in regards to student records has several dimensions.

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1. Following the initial consultation process, this concept was developed in discussion by the Committee on the Roles and Responsibilities of School Boards and the Department of Education, and is recommended in that committee's report.

First, this concept would suggest that parents or others[2] be given a legal right to 'informed access' to student records. Second, it is suggested that a school board or school board officials would be entitled to refuse access in cases where they believe that that access would be detrimental to the future development or educational opportunities for the student. Finally, the application of this concept in respect of student records would suggest that parents should have an immediate right of appeal in cases where access is refused by a school board or school board official.

Such provisions would change the responsibility of school boards and school officials. If this proposal were to be pursued, the onus would be on school boards or school officials to justify not providing information, rather than on parents or others to justify why they should be able to obtain it.

This is not necessarily an easy concept to include in law. For example, it would probably be necessary to define exactly what is meant by the term 'student record'. Does a

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2. 'others' in this case is intended to comprise those persons other than parents who have legal custody of a student, or students themselves where they have reached the age of majority.

student record include only formal reports as to a student's capabilities and progress, or does it include other things such as incidental notes or the observations of teachers or other professional staff?

It would also be important to give considerable attention to the nature of the appeal process. A mechanism would need to be found which would permit appeals to be handled locally, fairly, and promptly.

APPEALS FROM DECISIONS AFFECTING A STUDENT'S LIFE AND PROGRESS

Another area for potential School Act revision and additions concerns appeals from those decisions which may significantly affect the life or progress of a pupil.

The present New Brunswick Schools Act only contemplates appeals in regards to suspensions and expulsions. Section 46(3) reads in part as follows:

'Where a pupil is suspended or expelled ... his parent may appeal that suspension or expulsion to the Minister.'

There are two principal concerns. First, the scope for which formal appeals are presently possible may not be sufficiently broad. Second, consideration should be given to the extent that appeal procedures should be specified in the Schools Act.

Arguments for and against formal appeal processes

Legally mandated appeal processes also at times pose a

dilemma for operating organizations. While the introduction of a formal appeal process may provide a legal safeguard for fairness, it may not always result in program effectiveness being improved. It would not be appropriate, for example, for the school system to become preoccupied with quasi-judicial processes, as opposed to educational results. Care should be taken to ensure that those formal appeal processes which are introduced are indeed a justifiable safeguard for the effective operation of the school system, rather than just a response to those who distrust school boards, governments, or their officials.

On the other hand, it does seem appropriate that there be some formal avenue of appeal in situations where the judgements of officials or school boards may have a serious impact on a young person's future. Such processes should be generally available, fairly structured, and known to parents. It is clearly not sufficient to have appeal process which are only accessible to articulate persons, or to individuals who possess the political skill to gain attention for the problems with which they are concerned.

Designing an appeal process is, therefore, a question of balance. Appeal processes should preclude the frivolous but permit the substantive. Appeal processes must be fair. Appeal processes should be accessible, but sufficiently formal to ensure that decisions are well made. Appeal processes should proceed at all deliberate speed, but not endure beyond reasonable periods of time given the subject

of the appeal. Finally, appeal processes should be designed such that the resources spent on them are well spent in comparison with their potential other applications.

Scope of appeals

As a general principle, it seems reasonable that formal appeal processes should exist in regards to those decisions which significantly affect the development and future of students. Clearly, the existing provision in the Schools Act in regards to suspensions and expulsions[3] falls within this category. Two other areas which are suggested for consideration are placement and promotion.

Placement

The 'placement' of students is, under the present Schools Act, a school board responsibility. Particularly

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3. Whether or not 'expulsion' is still a valid concept is a topic of current debate. There are those who argue that individual rights now preclude the permanent withdrawal of the right to free schooling. Others argue that there are still behaviors of such severity that it is reasonable to exclude a student from free school privileges until such time as he or she proves his or her suitability to return to school. However, this argument is not necessarily material to the discussion on appeals, as either suspension or expulsion may significantly affect a student's future.

since the introduction of amendments to the Schools Act in 1986, placement has come to mean considerably more than simply determining the class and school to which a student belongs.[4] For example, placement includes decisions as to which educational programs are appropriate for a student. It seems quite clear that the decision as to what program a student will follow may have a considerable impact on that student's future.

Promotion

A second potential area for appeals, which is not addressed under the present school law, is that of promotions. It is also quite clear that whether or not a student is promoted to the next grade may have a significant impact on his or her future.

Subsequent considerations

Once this question of the scope of appeals is settled, there are a series of further questions which need to be

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4. The 1986 amendments to the Schools Act implemented in law what is known as a 'zero reject' concept. This means that the school system is obligated to serve all students, regardless of their disability or exceptionality. These revisions also repealed the Auxiliary Classes Act, which provided for the separate service of severely mentally retarded and cerebral palsied children.

addressed for each kind of appeal. They include:

1. To whom is a first appeal made?
2. What is the final level of appeal, and how many levels should exist between the first level of appeal and the final level of appeal?
3. Who should be able to access the appeal process?
4. How does an appeal proceed; i.e. what rules should be fundamental for all appeals?

At a minimum, all four of these questions need to be answered for each type of appeal in order to design an effective appeal process.

First level of appeal

In the case of an appeal from a decision on placement, promotion, suspension or expulsion, the first level of appeal would probably be to an official of a school board. In most boards, these decisions are initially made at the school level, thus it is possible to have an appeal to district staff without violating the principle that appeals should not be made to those who make the original decision. Alternatively, some districts may wish to have this function handled by a committee of the school board.

Final level of appeal

It seems logical that the final level of appeal for matters which could seriously affect a student's future should be not less than the full school board. However even

this may be questioned in boards with large enrolments, where it may be more appropriate to have these matters dealt with by a committee of trustees. A further question is which types of appeals should be handled at the provincial level, by the Minister or by some other body established for that purpose? There are two opinions on this matter. One would suggest that all matters seriously affecting the future of students should be capable of being appealed to the provincial level, as a safeguard appropriate to our provincial education system, in which school boards vary in size from those which serve a few hundred to those which serve many thousands. The alternate point of view is that school boards, as autonomous, locally elected bodies, should be and are capable of resolving these kinds of appeals. A further observation of proponents of this latter view is that the establishment of school boards as a final level of appeal does not necessarily restrict the Minister's ability to investigate or mediate where such action is deemed necessary.

Who may appeal

The third question deals with who should be entitled to launch an appeal. One suggestion is that appeals should not be permitted except in respect of individual cases. A further suggestion is that the entitlement to launch appeals should be limited to parents, individuals having legal

custody of a student, or the student himself or herself in cases where the student is of the age of majority or deemed by the School Board to be living independently.

Rules for appeals

The fourth question has to do with what rules should apply in regards to appeals. Here, the issues to be addressed deal with matters such as time, materiality, and fairness. For each type of appeal, what time limits should be established for response? In regards to questions such as placement, promotion, suspension and expulsion, what aspects are of such little overall significance that they should not be something to which appeal rights apply (e.g. minor differences in grading)? What restrictions should be placed on the appeal process to ensure that it is truly used to redress potential, perceived, significant wrongs, rather than as a mechanism to vent frustrations? This latter consideration implies a further question as to the level to which different types of appeals should be permitted to proceed.

Finally, appeals under statutory provisions must proceed according to the rules of natural justice. In the case of school system appeals, to what extent do these rules need to be explained or elaborated in statute law or in regulation?

PARENTAL INVOLVEMENT

Another consideration for this section on students and their parents is what statutory provisions should exist in regards to parental involvement?

Are statutory provisions required?

There seems to be a strong consensus that parental support and parental involvement are critical factors in helping students succeed in school. However it is debatable whether or not statute law is an appropriate tool for encouraging those kinds of parental involvement which will improve educational opportunities and success.

One point of view is that adding parental involvement to statute law is important because that would give this dimension of schooling profile and force. This point of view would suggest that provisions in statute law would provide further reinforcement about the importance of parents helping their children to succeed in school. Some feel, also, that the school system is too insular and that parents are too removed; statute law might serve to remind the school system of its responsibility to involve parents and to remind parents of their responsibility to be involved.

The Province of Quebec uses law to mandate structures which will ensure parental involvement. Under Quebec law, school and area committees are established with a view to ensuring that parents are active participants in the

operation of the school system. This development is somewhat controversial. It leads school boards to question whether parent committees are truly educationally oriented, or legislatively mandated alternate bodies of governance. The question naturally arises as to whether the school system should be locally managed by those who are elected, or by those parents who become involved through formal parent groups.

An alternative point of view suggests that parental involvement is not an appropriate subject for statute law. Those who favour this point of view suggest that effective parental involvement is a result of doing rather than prescribing, and that motivation by rules is either ineffective, or inclined to give results other than educational improvement.

Parental participation in decision-making

Another view, which is particularly prevalent among special education organizations and advocates, is that parental participation is essential to sound decision making. Advocates of this point of view argue that since education is a shared responsibility among schools, parents and others, parental participation, rather than consultation and information, is important to ensuring that young people maximize their opportunities while being served by the school system. Advocates of this point of view seek legal assurances that parental participation will be active, rather than consultative.

THE OBLIGATIONS OF PARENTS AND STUDENTS

It has been said that the only thing worse than no law is law which cannot realistically or practically be enforced. For this reason, it is beyond the scope of our Schools Act to deal comprehensively with the responsibilities of parents and students. Nonetheless, some minimal requirements have traditionally been a part of our school law, and will probably continue to be so.

Present provisions

There are perhaps three areas where school law deals explicitly with the responsibility of parents and students. First, students have a duty to attend school. Second, parents have a duty to ensure that students do indeed attend school and parents are, in fact, liable for penalties in the event that their children do not. Finally, the Schools Act provides for certain powers of discipline, at least partly on the basis that it is an obligation of students to conduct themselves in a sufficiently orderly fashion not to disrupt education. These areas deserve some consideration when revising and consolidating our Schools Act.

Compulsory attendance and truancy

Although the general provision for free school privileges extends from ages six through twenty, compulsory attendance applies from ages seven through fifteen. In the consultation process to date, there has been no suggestion that these compulsory attendance ages are inappropriate.

There has, however, been some concern about the provisions in respect of truancy.

Current statutory provisions make parents liable for ensuring compulsory attendance. They prescribe minimal fines in the event that a parent is convicted of not ensuring that a child is in school (i.e. $20 for the first offense and $40 for each subsequent offense, etc.). There is also provision in the Act for school attendance officers.

There are a number of problems with these provisions. First, most districts do not have 'attendance officers', although they may have officials or personnel who are concerned about truancy. Thus some adjustment to the Act is necessary in order to contemplate current school board realities.

Second, the fines are minimal, and based on the twin assumptions that fines are an appropriate remedy, and that fining parents will result in student's attendance.

Although few would suggest that the law should contemplate no responsibility on the part of parents, many would agree that parents may not be in a position to influence whether or not a student, particularly an adolescent, regularly attends school. A further consideration has to do with the educational future of students who do not attend school when they are supposed to. It is difficult to see how a fine to a parent could motivate a truant to return to pursue his or her educational opportunities. It is also difficult to see how a fixed

dollar fine could be an effective sanction, given the vastly differing economic situation of parents. Finally, the administration involved in ensuring that fines are levied and collected may be inappropriate where the objective is to encourage a young person to re-enter and continue schooling.

All this suggests that statutory provisions in respect of truancy should be adjusted to be somewhat more flexible than they presently are. One suggestion is that courts should be given considerable discretion to prescribe remedies for parents or students such as may be appropriate to maximize the chance that the truant will actually return to school and benefit from further education.

Discipline

Two issues have emerged in regards to school discipline.

First, there is concern that the present provisions in the Schools Act in respect of suspension are insufficient. Second, there is concern that the present Schools Act and Regulations do not make explicit the requirements of natural justice in regards to school discipline.

Basis for suspension

The first matter has primarily to do with Section 53 of the Schools Act which provides that principals may suspend pupils where they are 'persistently disobedient', where they 'persistently refuse to do assigned school work' or where

they are 'addicted to any vice likely to affect injuriously the character of other pupils'. Arguments are made to the effect that there are situations which are not 'persistent', or which do not involve the provable 'addiction to a vice' where suspension may be warranted. It is suggested that if an appeal process is introduced in law which applies to suspensions, then it may be appropriate and reasonable to give school authorities a broad power to suspend 'for a good and sufficient cause'. This argument suggests that the appeal process would serve as an adequate control on the use of suspension as a disciplinary tool.

Natural Justice

The second question on discipline has to do with the fairness of disciplinary procedures. Recent laws, such as the Canadian Charter of Rights and Freedoms and the Young Offenders Act, have highlighted the necessity of ensuring that the rules of natural justice[5] are followed by school authorities in regards to school discipline. This means that procedures for discipline must be fundamentally fair: for example, both sides of a story must be heard before disciplinary action is taken. On the one hand it is argued that this new emphasis on fairness requires that the Schools Act or Regulations spell out procedures, particularly for

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5. The American term 'due process' is also frequently used to describe the concept of natural justice.

the more serious disciplinary actions. The converse argument suggests that these matters are already well covered in law, and are better addressed by policy and practice than by adding to the Schools Act.

Corporal punishment

A further consideration under the heading of discipline is that of corporal punishment. At present, the New Brunswick Schools Act is silent on this subject.

Some groups advocate that corporal punishment should be totally banned from our schools, and that New Brunswick's school law should require this. Others suggest that this may not always be appropriate.

This argument extends beyond provincial law. The Criminal Code of Canada presently exempts teachers from prosecution for the reasonable use of corporal punishment, although some interest groups have taken initiatives to attempt to secure the repeal of this exemption.

PART III: SCHOOL PROGRAMS AND ACCESS TO THEM

One of the fundamental functions of the Schools Act is to define who shall be served by New Brunswick's public school system. A second function is to make some basic statements as to the organization of the school system, with a view to determining which students attend which schools.

The first question primarily deals with who shall enjoy free school privileges. Subsequent sections deal with the consolidation of provisions respecting special education in the Schools Act, and with private schools. Following this is a discussion of issues related to the linguistic organization of the New Brunswick school system. This part of the paper concludes with a discussion of residency in relation to the placement powers of school boards.

AGE CRITERIA FOR ACCESS TO FREE SCHOOL PRIVILEGES

Although chronological age may not be an ideal criteria for determining who may attend school without charge, it remains in use in Canadian jurisdictions because it can be applied with ease and objectivity.

Under present Schools Act provisions, students are legally eligible for free school privileges from the ages of six through twenty. There is also a provision in the Schools Act that allows the Minister to make exceptions 'for any person'.

Questions do arise regarding those situations for which it may be appropriate to extend school services to children under six or to young adults over twenty. Although present law does permit individual exceptions to be made by ministerial decision, this exception making process may no longer be appropriate.

Students over 20

There are cases where a young person does not complete his or her schooling by the age of twenty, and should therefore be able to continue past that age in order to do so. However, it does seem reasonable that the law impose some limits on schooling which is provided at the taxpayers' expense. Should these limits be expressed in terms of a maximum number of years of scholarity? Or should the limit continue to be expressed by a fixed age, as it is now? Should the power to make exceptions continue to rest with the Minister or be assigned to school boards?

This latter question has received some attention during discussions to date of potential changes to the Schools Act. On the one hand, it is argued that exception granting authority should rest with school boards, for reasons of administrative practicality, and because they are best placed to determine when an exception to permit an over age student to continue to attend school free would be educationally appropriate. On the other hand, it is argued that the requirement for equity in practices among school

boards weighs in favour of the exception-granting authority continuing to rest with the Minister, particularly given central financing of the school system.

Services for children below school age

A further dimension of the age-eligibility question has to do with services for children who are not yet six. Particularly with the development of early childhood programs, it may be entirely appropriate to permit some school services to be extended to young children (for example, use of school premises, or access to school health or diagnostic services). It is true that these situations could legally be handled under the existing provision which permits the Minister to make exceptions 'for any person'. But it may also be appropriate in revising the Schools Act to make some provision which would allow exceptions to be made on a more general basis, perhaps by regulation.

FOREIGN STUDENTS

In revising the Schools Act, some consideration might also be given as to whether foreign students should be charged fees for attending New Brunswick schools.

In favour of such a practice, it is argued that the New Brunswick taxpayer should not be expected to bear the cost of providing schooling for foreign students. It can also be noted that most provinces do either require or permit tuition to be charged for foreign students.

Arguments against introducing tuition for foreign students tend to centre on the notion that the administration of a tuition fee policy would be more trouble that it would be worth. Proponents of this point of view note that in addition to the workload of handling what provincially would be a rather small amount of revenue, it would be cumbersome to develop and apply an appropriate definition of a 'foreign student', and to determine those situations in which exceptions might reasonably be made.

Another consideration would be whether increased numbers of foreign students would positively affect the composition of our schools. It is sometimes argued, for example, that the existence of an increased number of foreign students would help young New Brunswickers gain a more full appreciation of our increasingly pluralistic Canadian society. It is also noted that the absence of foreign student provisions in our Schools Act, coupled with existing immigration laws and practices, may be preventing foreign students from participating in and contributing to New Brunswick schools.

SERVING ALL PUPILS

One of the purposes for revising and consolidating the New Brunswick Schools Act at this point in time is to amend that Act such that it is the principal, comprehensive legal authority for providing school services to all pupils.

Until recently, some school services were provided under two other acts. The Auxiliary Classes Act provided for separate services through 'auxiliary classes' for severely mentally retarded and cerebral palsied children. The Education of Aurally and Visually Impaired Persons Act continues to provide authority for some hearing and sight impaired children to be served by the Atlantic Province Special Education Authority (APSEA), or through arrangements with other governments.

Integration: Former auxiliary classes

Within the last year, the Auxiliary Classes Act was repealed, and those exceptional pupils who had been served under it became the direct responsibility of the school system. The 1986 amendments to the Schools Act, which made possible this change, were done in such a way as to provide for the integration of exceptional pupils in the regular school system. The amendments also attempted to reduce the categorization of exceptional pupils, as is consistent with trends in the development of special education.

However the integration process has at times been controversial, as the term 'integration' has tended to mean different things to different people. The 1986 amendments included a requirement to place exceptional pupils in regular classes, having due regard to the capacities of the school board and the educational needs of all pupils. This fell short of the legislatively mandated placement policy

sought by some, which would have required the placement of exceptional pupils in the 'least restrictive environment' according only to the needs of those exceptional pupils.

The 1986 amendments avoided this approach for two reasons.

First, it was felt that although placement decisions in regards to exceptional pupils should be made in ways that lead to more integration and less isolation, there must be some flexibility in the application of these principles, if the educational needs of all children and the competencies of teachers are to be fully taken into account. Second, it is a departure from our legislative tradition to prescribe the placement policy of the day in statute law.

Education of Aurally and Visually Impaired Persons Act

In regards to the Education of Aurally and Visually Impaired Persons Act, there do not appear to be any significant impediments to its repeal, provided that complementary amendments to the Schools Act can be made which would ensure the continuity of these interprovincial programs and arrangements. If these changes were to be made, the Schools Act would then stand alone as the provincial law governing the organization and operation of the New Brunswick school system. A consolidated school law would be achieved.

PRIVATE SCHOOLS

Very few children attend private schools in New

Brunswick. Over the last 20 years, private school attendance has accounted for 1% or less of the school age population. Almost all New Brunswick private schools are religiously based. The present Schools Act includes a provision which allows the Minister to exclude from the duty of compulsory attendance those school age children who the Minister deems to be 'under efficient instruction' elsewhere. Private schools are periodically visited by Department officials, who review matters such as the curriculum which is being taught. Providing those reviews are favourable, children attending those schools are exempted by the Minister from compulsory attendance at public schools. No financial support is provided by the government for the operation of private schools.

In New Brunswick, there do not appear to be any significant pressures to change the existing arrangements. However other Canadian jurisdictions are being faced with questions as to the extent to which public financial support should be provided for private schools, or the extent to which the Minister is or should be obligated to ensure that all school age children receive a sound education, whether they attend a private school or a public one. It may be appropriate, in the course of reviewing our Schools Act, to give at least some consideration to the current arrangements for private schools.

WHO SHOULD GO TO WHICH SCHOOLS?

Placement authority

One of the issues related to access to schooling has to do with what legal provisions should exist to determine which students go to which schools. 'Placement of students' is, under our Schools Act, uniquely a school board responsibility. The Minister may persuade school boards from time to time to make or change certain placement decisions that are problematic. Similarly, it may be possible for the Minister to use the authority given under other sections of the Schools Act to indirectly determine how students will be served, and where. But the legal authority to 'place' students now rests exclusively with school boards. The consultation process to date has not revealed pressure to change this.

On the other hand, the Schools Act does provide legal guidance as to how that placement authority will be exercised. Section 3 of the Schools Act provides for the organization of school districts, schools and classes 'on the basis of one or the other of the official languages of New Brunswick'. This section, along with other law, are being interpreted by the courts in ways which impose some limitations on which students may go to which schools. Similarly, residency has at times been a problematic concept in regards to determining where students attend school, and there are suggestions that a revised and consolidated Schools Act should attempt to clarify this question.

Organization of the School System on a Basis of Official Language

The evolution of two school systems

The New Brunswick public education system is, in effect, two school systems, one for each official language community. Each system covers a large portion of the province. Many areas are served by two boards, one for each official language group.

The Schools Act supports and has provided mechanisms to facilitate the evolution of the New Brunswick school system in this way. For example, there is provision in the Schools Act for minority language advisory committees and for minority language school boards. School management structures for schools serving the official language minority in an area (either anglophone or francophone) have evolved through the stages of minority language advisory committee and minority language school board, to eventually become full-fledged school boards.

Indeed, the amendments to the Schools Act which have permitted this development over time appear to have worked quite well. But now that most areas of the province are served by both an English language and a French language school board, it is time to ensure that the Schools Act contains appropriate provisions regarding which board serves which students.

There are a number of legal and related issues which tend to confuse discussions about the linguistic organization of the school system. This is also an area of great sensitivity; the politics of official languages tend to be emotional. There are at times differing views as to what should be included in school law.

Some tests

Before making brief comments on the issues involved, it would perhaps be appropriate to suggest a few tests for proposals which have to do with legal provisions regarding the linguistic organization of our school system. Three questions are presented here for consideration:

1. Do proposed measures enhance or impair students' opportunities for educational success?

If New Brunswick is to continue to become a society in which each official language enjoys equality of status, and in which each official language community prospers, then the school system will continue to be a primary mechanism for contributing to this goal. At the same time, the school system has a fundamental purpose of providing young people with the knowledge, skills and understandings necessary for their adult lives. In reviewing what our school law should say in regards to determining which students go to which schools, it is important that provisions be such that these two objectives of education may be pursued in ways that are complementary. Many would see it as inappropriate, for

example, to produce law which had the effect of denying students access to programs which were important to them, as a result of official languages considerations. It is fortunate that to date this has not been a major problem, because emphasis has been placed on ensuring that each linguistic sector of the school system has comparable educational programs.

2. Do proposed measures permit and encourage the development of each official language community?

There is an important philosophical difference between official languages policy in New Brunswick and the language policies of many other provinces. New Brunswick policy and the New Brunswick school system are based on an equality of official languages. Thus we think of two official language communities, both of substantial size, rather than of a province comprised of an official language majority and an official language minority.

Other provinces have seen fit to deal with the question of official languages by giving one or the other official language community an advantage or preferred status. In contrast, it would probably be best for New Brunswick school law to permit each official language community to continue to develop and thrive, rather than prescribe preferences or advantages.

3. Are provisions in statute law truly necessary?

This is, of course, a test which should be applied to all proposals for statutory change or addition. However it is particularly important in those areas, such as official

languages, where strong and well-articulated opinions compete to be reflected in statutory provisions. In regards to official languages, for example, it may be important to ensure that provisions which restrict or control citizens, students or school boards are only added where they are necessary to protect the development of one or the other official language community.

Current issues

There are a number of current issues with regards to the present legal provisions which establish the linguistic duality of our school system and access to each component of it.

Section 3 of the Schools Act

First, there is an anomaly between the English and French versions of the Schools Act in Section 3.3. The English version of this section precludes school boards from providing services to persons 'of the other official language'. The French version of this section precludes school boards from providing services for persons 'parlant l'autre langue officielle' (speaking the other official language). The difference between these provisions became an issue before the courts. In his initial decision[6],

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6. S.A.N.B. et al vs. Minority Language School Board No. 50, New Brunswick Court of Queen's Brench, June 24, 1983.

Mr. Justice Richard favoured the concept of linguistic ability over the concept of belonging to one or the other official language group, partly on the basis that not all persons can be successfully categorized as belonging to either the anglophone or francophone community. This matter has been considered further by the New Brunswick Court of Appeal. At the time of the writing of this paper, their decision has not been rendered.

Linguistic rights for schooling

When considering official languages concepts in regards to education, it is also important to remember that some of the most important legal provisions concerning official languages and school are not part of the Schools Act.

The entitlement to instruction in English or French, and to instruction in the second official language, is based on the concept of mother tongue, defined as language first learned and still understood. Moreover, it is defined in terms of the mother tongue of parents, and the legal provisions providing these rights are included in the Official Languages of New Brunswick Act and the Charter of Canadian Rights and Freedoms, rather than in the New Brunswick Schools Act. Thus we have a situation where the entitlements to schooling in one or the other official language are established constitutionally and by separate provincial statute, leaving the role of the Schools Act as establishing the linguistic character of the school system

and setting forth which students may be served by each linguistic sector. It is probably appropriate that the Schools Act continue to be restricted to this latter role.

Two other aspects of the legal environment deserve mention in any discussion of official languages in New Brunswick education, although neither necessarily have implications for revisions or changes to the Schools Act. First, there are some who argue that there is a right of free choice which prevails over existing statutory provisions in regards to where students may attend school. Proponents of this argument suggest that a parent should be able to define his or her child's eligibility for service from a francophone or anglophone school board by registering at one or the other school board, regardless of linguistic capability.

Educators generally do not agree with this point of view, because a child who cannot function in the language of the school is impaired by his or her inability to benefit from instruction. This question of the limits of free choice in New Brunswick schooling has also been a part of the arguments currently being considered by the New Brunswick Court of Appeal.

A second factor in the legal environment is New Brunswick's separate statute which establishes the equality of the English and French languages. Although this law need not have any direct effect on revisions or additions to the Schools Act, it is significant, complementary legislation to

the Official Languages of New Brunswick Act and the Canadian Charter of Rights and Freedoms in describing the nature of our province.

Immersion

During the consultation process to date, possible statutory provisions governing immersion programs have emerged as controversial.

Immersion programs in New Brunswick are, by definition, a method of teaching a second official language by carrying out instruction in that language. Department of Education policy has been written in such a way as to allow or require immersion programs to be offered in either linguistic sector, as a method of learning the other official language. However immersion programs have not to date been used as an approach for acquiring English as a second language. In contrast, immersion programs have experienced phenomenal growth in the anglophone sector as an approach for acquiring French as a second language. The same kind of phenomenal growth in the use of immersion programs as a way of acquiring French as a second language has taken place in many other provinces.

The legal issue arises because of the risk that francophone students will enroll in immersion programs in the anglophone system.

This tendency could result in diminishing enrollments in the francophone sector. If enrollments diminish

significantly, program delivery would be affected. This could also encourage assimilation, thus eroding the francophone community in general.

It is also argued that when students who are already capable in French enroll in a French immersion program, they subvert the purpose of that program as a method for aiding anglophone students to acquire French as a second language.

Immersion programs are designed in such a way as to permit the second language to be acquired by those who do not have a substantial prior knowledge of it. In such a program, native speakers of the second official language may not be sufficiently challenged educationally, and those for whom the program is designed may not receive the benefits they should, if program delivery is adjusted to accommodate native speakers in the class.

Accordingly, there is agreement in both linguistic sectors that students who are already competent in French should not be permitted to enter a French immersion program. Indeed, this point of view was also supported by Mr. Justice Richard, who not only agreed with the principle, but indicated that the school board operating the immersion program has a 'duty to exclude' those who attempt to enter it if they are already capable in the second language.

There are, however, two points of contention. First, the definition of an immersion program is unclear. Second, there is a difference of opinion as to whether or not Mr. Justice Richard's decision should be reflected in additions to the Schools Act at the time of its revision.

The former question is an issue because the term 'immersion' has been used to cover many different configurations for program delivery, varying from one language intensive subject delivered in French in addition to the subject of French as a second language (commonly referred to as extended core French) to programs where at least 80% of the instruction in the first three years of participation in a program is in French (so called 'total' immersion). There is no disagreement with the rightness of Mr. Justice Richard's decision in regards to total immersion programs. However there is little consensus as to when an extended core or partial immersion program should fall under the same rules.

Second, the question is asked as to whether or not immersion, as one current method of achieving one educational objective (i.e. second language acquisition) is sufficiently important that it deserves attention in statute law, given that the issues have been and are being addressed by the courts and can be addressed by policy. On the one hand, adding provisions to the Schools Act about immersion amount to establishing admission criteria for program components by statute law. On the other hand, the perceived risk to the francophone sector of diminishing enrollments and assimilation may be substantial; immersion participation in the anglophone sector has grown to the point where 15% of the province's anglophone school population are enrolled in immersion programs.

Residency

At present, the New Brunswick Schools Act provides no definition as to residency. It is argued that such a definition is necessary, in order to make it clear which school board shall make placement decisions in regards to pupils.

In recent years, individual cases have arisen where school boards and parents have disagreed as to the location at which children should attend school. Most recently, such a case arose in Notre-Dame-de-Lourdes. Here, the school board serving the area determined that students should be bussed to school in District 33. However a significant number of parents expressed a strong preference for their children to be accommodated at St-Leonard in the adjacent district (District 32). There are no provisions in the present Schools Act which aid the resolution of this kind of situation. It is argued that residency should be clearly defined in the Schools Act in order to settle, for those kinds of cases, which school board has the authority to make placement decisions.

This issue is not as simple as it first appears.

For elementary aged children the definition of residency would seem to be not too difficult: residency would presumably be the location at which the child resides with his or her parent or legal guardian. As students become older, however, they may be living independently, whether or not they have reached the age of consent or the

age of majority. Thus any statutory provisions with regards to residency would necessarily need to deal with those situations in which the residence of the student may be different from that of the parent or other person having legal custody. The case is fairly clear for students who have reached the age of majority; presumably residence would be defined as where they live. However for younger students who are living independently, the law would also need to specify who decides when a student is living independently.

There is also a complication in regards to legal custody and guardianship. Guardianship is a somewhat less formal concept, and can be assigned (under the Guardianship Act) with relative ease and without formal reference to the courts. Legal custody, on the other hand, implies the necessity for a court order.

A further consideration in settling this issue is the potential differences in opinions between a school board and a parent as to the location at which a student will be best served educationally. There are situations where school boards consent to students attending school in a different district because such arrangements are educationally advantageous for that student. It seems clear that the addition of residency provisions to the Schools Act should not be used to inhibit this practice. But if residency provisions are added, it will be necessary to ensure that their use is always with a primary consideration to what is educationally best for the student, rather than to protect a

district's territory, authority or enrollments. Again, the question arises: Is new statute law necessary in order to remedy these occasional difficulties?

PART IV: SERVING THE STUDENTS AND THE PUBLIC INTEREST

This part of the paper is primarily concerned with school boards and school trustees.

New Brunswick school boards are locally elected bodies which manage the day-to-day operation of the New Brunswick school system. The role of the school trustee is a significant one. He or she is accountable to the electorate and the Minister for ensuring that students in the area served by the school board receive the best possible education.

School boards are obligated to meet provincial standards as to what will be accomplished in New Brunswick schools and to deliver education within the limits of provincially established and provided budgets. However, school boards have considerable latitude as to how those programs are delivered, and control such critical issues as the hiring of teachers and other personnel, and the management of budgets which together are approaching half a billion dollars a year. Although the profile of school boards is frequently not high, their responsibilities in management terms frequently exceed those of most New Brunswick municipalities, and their impact is critical to the preparation of New Brunswick young people for their adult lives.

In reviewing the Schools Act, then, it is important to give attention to those provisions in law which determine how trustees are selected, outline what is required of them, deal with their public accountability, and otherwise provide for the operation of school boards.

ELIGIBILITY CRITERIA FOR TRUSTEES

Before giving consideration to the question of how trustees should be selected, it is appropriate to give some thought to those requirements which should be included in law which determine who may be eligible to be a school trustee.

Presently, the Schools Act includes three requirements. First, a person who seeks to be a trustee must be 18 years of age. Second, he or she must be resident in the sub-electoral district or zone which he or she seeks to represent for a period of at least one year prior to the election. Third, a person who seeks to be a trustee cannot be an employee of the Minister of Education, nor of the school board on which he or she hopes to serve.

To this point in time, there has been no questioning of the criteria that a person must be 18 years of age in order to be a school trustee. Other criteria, though, may require some discussion.

Residency

At present, the territory which each school board serves is divided into geographical areas call sub-electoral districts. In some school districts, these sub-electoral districts are grouped in zones. Trustees are then elected from each sub-electoral district or zone, in order to ensure that the different areas of a school district are represented. It is unusual for a school board to group all its sub-electoral districts into one zone, thus producing trustees through an 'at large' election.[7]

The existing residency provisions have caused problems, particularly where a valued trustee moves within the school district from one sub-electoral district or zone to another, in the period of less than one year before an election. In this case, the trustee ceases to be eligible for re-election, regardless of the contribution which he or she has made.

One suggestion has been to waive the one year sub-electoral district or zone residency requirement in the case of trustees who relocate within the school district they serve. This suggestion, however, would discriminate in favour of incumbents.

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7. Grand Manan Island, which comprises one school district, is an exception to this.

A further suggestion would be that the one year residency requirement apply at the district level, but that the residency requirement in regards to a sub-electoral district or zone apply only at the point of nomination or election.

Revisions to the Schools Act should address the question of residency requirements for trustees, and either confirm the present requirements or adjust them in ways that are perceived to be more appropriate. This is particularly necessary now that New Brunswick has introduced fully elected school boards.[8]

Citizenship

The present Schools Act does not require that school trustees be Canadian citizens. Some have suggested that this requirement should be added. If this suggestion is pursued, it may also be appropriate to determine whether or not persons who have acquired 'landed-immigrant' status should also be eligible to be school trustees.

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8. There remain statutory provisions which permit the appointment of additional military or Indian representatives in areas where military or Indian students are served.

Language Capability

As has been discussed earlier, two, 'homogeneous' school systems, each organized along linguistic lines, have evolved. During the consultation process to date, there have been suggestions that a legal requirement should be added to the effect that trustees must be capable of fulfilling their obligations as school trustees in the official language of the group served by their school board. There are also suggestions that candidates should attest to having such language capability on their nomination papers. Finally, it has also been suggested that requirements should be added to the Schools Act to ensure that school boards actually do carry out their business in the official language of the group which they have been organized to serve.

All of these suggestions are restrictions to ensure that school boards serving the Anglophone population operate in English and school boards serving the Francophone population operate in French. In revising and consolidating the Schools Act, it will be important to decide to what extent such safeguards need to be included in statute law.

Exclusions

In recent years, there have been suggestions that the present provisions which exclude school board employees from serving on the school board for which they work, or employees of the Minister from serving on any school board,

be broadened. Cases have arisen where there has been a perception of conflict of interest as a result of the presence on school boards of employees from another school district, close relatives of school board employees, or bargaining unit representatives of school board employees. Suggestions have been made that a revised Schools Act should exclude some or all of these categories of persons from being eligible to be trustees.

Those who argue against such proposals suggest that neither the incidence of perceived or actual difficulties, nor the scope of the subjects which might give rise to conflict of interest, are sufficiently significant to justify an expansion of the present exclusions. In the case of employees from one school board who serve on another school board, for example, it is argued that to exclude this form of involvement on the grounds of potential conflict of interest would be to deny school boards an informed perspective from which they may benefit.

Two other factors should be taken into consideration when discussing this issue. First, a broad extension of exclusions might not be constitutional; it is doubtful the extent to which significant numbers of individuals could be deprived of their opportunity to run for public office, even given the 'reasonable limits' clause of the Canadian Charter of Rights and Freedoms. Second, it may be possible to legally provide safeguards against such conflict of interest situations by introducing or broadening present conflict of

interest provisions, such that trustees may not take part in any debate or decision making in situations where they have or are perceived to have a potential conflict of interest.

Becoming a trustee vs. continuing as a trustee

Although the current law provides for triennial elections, some trustees are appointed. The revised Schools Act should ensure that eligibility criteria are clear in respect of those who are becoming school board members (i.e. seek election or are being considered for appointment), as well as in the case of those who are serving on the school boards. This latter question has to do with the effect of eligibility criteria when one or more of those criteria cease to be met by someone who has already been elected or appointed as a school trustee.

SCHOOL BOARD ELECTIONS

The Schools Act presently provides for school board elections every three years. Every school board has seven, nine, or eleven elected members, as determined by Regulation. In addition, certain school boards have military or Indian representatives.

Who votes for which Board?

The main concern with the current process for school board elections has to do with the fact that most areas in the province are now served by two school boards: one for

Francophone education and one for Anglophone education. In areas served by two school boards, voters choose the school board for which they will vote at the polling booth. There are no processes to provide for prior choice.

This may cause problems, particularly where candidates achieve office by acclamation. In such cases, the voter is presently free to vote for the other board which serves his or her area. As a result, there is a risk, in such situations, that candidates are elected by voters from one linguistic community, even though they are running for office in the other. There is a concensus in the education community that this problem should be rectified in the revision of the Schools Act.

Legal provisions are required to establish a workable process to determine which voters will vote for which school boards. A number of criteria for making this choice have been suggested over time. To which linguistic community does the voter belong or identify? What is the voters language capability? Which board serves or would serve the voter's children? For which board would a voter choose to vote?

It would be difficult to apply a criteria of 'belonging' to one or the other linguistic community. As Mr. Justice Richard has pointed out, some New Brunswickers belong to neither linguistic community, and some bilingual New Brunswickers may be equally at home in both. Similarly, there are problems with discriminating on a basis of

linguistic capability. Some New Brunswickers are bilingual. Some have been extensively assimilated, but wish their children to return to their families' mother tongue.

It also does not appear practical to use the board which serves or would serve a voter's children as a criteria. Some bilingual New Brunswickers have children in each system. Many voters have no children of school age or younger.

Therefore, it seems that the most practical course of action is to let voters decide for which board they shall vote. To date, discussions have supported this approach, providing there are some improvements in the election process to safeguard against the problems mentioned earlier. The improvement most frequently suggested is separate enumeration of voters in areas served by more than one school board, with no opportunity to change voters' lists after the date of close of nominations. Presumably, enumerators would ask each voter at time of enumeration for which school board they wish to vote, in areas served by more than one board.

This proposal is not without its critics. Without additional provisions, this proposal contains no safeguard that the voters' choices, although made at an earlier point in time, would be appropriate. Some also fear that the practice of separate enumeration would have distasteful public effects, labelling voters as 'Anglophone' or 'Francophone'. On the other hand, advocates suggest that

separate enumeration would at least be an improvement, and express confidence in the voters to make appropriate choices at point of enumeration. It could also be noted that if necessary, a challenge procedure could be introduced at a later point in time.

Whichever solution is eventually chosen, it does appear important that a revised and consolidated Schools Act at least attempt to address the problem of the present electoral process, given the evolution of two school systems covering most of the province.

Language of operation of School Boards

As mentioned earlier, concern has been expressed to ensure that candidates are able to work in the language of the school board on which they wish to serve. A statutory requirement for Boards to operate in the official language of the group they serve has also been suggested (see earlier discussion on eligibility).

Timing of School Board elections

Some have also expressed concern about the timing of school board elections. School boards have only recently become fully elected. This transition has coincided with a significant growth in school board responsibilities, particularly in terms of finance and management duties. Many school boards now administer annual budgets which exceed those of many municipalities, and employ considerably

more people. The argument is made by some that school boards should no longer be elected at the same time as municipal government, as this tends to perpetuate the notion that the school board is a secondary body that one may or may not choose to vote for at the time one chooses municipal representatives.

Vacancies on School Boards

Concerns have also been expressed with regards to the present provisions for filling vacancies on school boards. Currently, school board members are replaced by appointments approved by the Lieutenant-Governor-in-Council.

This process can be lengthy. It has been suggested that such vacancies might be filled more expeditiously by appointment by the School Board or Minister of Education. Others suggest that now that New Brunswick has fully elected school boards, the appropriate way to choose replacements for school board vacancies would be by by-election.

Elected Chairpersons

Finally, it has been suggested that the chairperson of a school board might be chosen in future by election at large, rather than by school trustees from among themselves.

Advocates of this measure suggest that the school system would be better served if the chairperson had more ability to preside and guide the affairs of the board, based on the legitimacy of having been elected at large.

Opponents of this notion suggest that the chairperson should continue to be generally empowered only to preside over school board meetings, and to carry out such other functions as he or she is authorized or expected to perform as a servant of the board.

OTHER MATTERS CONCERNING TRUSTEES

Three other matters have been recent concerns which may require revisions or additions to the Schools Act. One is conflict of interest provisions. A second is liability protection for trustees and others. Finally, there is the question of remuneration for school trustees.

Conflict of Interest

The present Schools Act has a limited conflict of interest provision which reads as follows:

> '25 A school trustees who has an interest, direct or indirect, in any person or corporation making a contract or offering to make a contract with the school board of which he is a member
>
> (a) shall disclose that interest to the board before any such contract is discussed or undertaken,
>
> (b) shall not participate in any discussion of any such contract or in any decision to undertake such contract.'

As can be seen, this provision is limited to contracts. Some believe this should be broadened to include other matters, such as personnel questions, or other transactions from which a school trustee or a close associate of a school trustee may benefit. If such broadening were to be done, it might relieve some concerns about the criteria for eligibility to be a school trustee (see earlier discussion).

Liability

By decision of Board of Management as the employer of all public servants, there is an undertaking to 'indemnify and defend' teachers and other school board employees from liability for actions taken in the course of their work. However there is, at present, no statutory provision which permits similar protection to be extended to school trustees or volunteers working in schools. It is also questionable as to whether or not student teachers are covered by present liability provisions.

There seems to be a concensus that revisions to the Schools Act should at least enable or provide for similar protection to that extended to employees. However, the question of developing statutory provisions regarding liability protection is not an easy one. At least three issues need to be addressed: To what extent should such protection be provided? Under what conditions should such protection be provided? For what types of actions or events should such protection be provided?

Extent of protection

In regards to the first question, the extent of protection afforded to employees is to 'indemnify and defend', not to 'save harmless' from legal action. This limitation is explained using the argument that although it is reasonable to protect employees against liability, it may not be reasonable to provide that protection to the extent that others are deprived of their entitlement to sue.

Conditions for protection

The second question has to do with the conditions under which liability protection should be extended. For example, it would seem reasonable that liability protection for trustees would only be extended where the trustee acts as a trustee, and in good faith. With respect to volunteers, it may also be reasonable to limit the provision of liability protection to situations where the volunteer was carrying out duties known to and authorized by the school board or its employees. One might also question whether liability protection should be limited to situations where individuals are acting within their competence.

Other forms of liability

Finally, discussions to date have tended to centre on personal liability. Other forms of liability, such as property liability, may also need to be considered.

Reimbursement, allowances and remuneration

Questions have also arisen during discussions of potential changes to the Schools Act as to whether or not school trustees should be remunerated, and as to the practices should apply in respect of their expenses.

Those who oppose remuneration for trustees argue that it is a well known condition of seeking office on a school board that service on school boards requires a commitment of time, and is a form of volunteer work.

Conversely, proponents of remuneration for trustees point out that modern school boards are multi-million dollar public enterprises, that the commitment of a trustee goes considerably beyond that of a volunteer in other areas, and that honoraria or some other form of remuneration would be appropriate, as has become the practice in some municipalities.

A second issue is the extent of reimbursement or allowances for school board expenses. At present, reimbursement or allowance rates tend to follow government practices. There is generally no provision for reimbursing trustees for time missed from their work. Similarly, some would argue that present limitations are not appropriate, given the practices of some other public sector entities.

If such measures are contemplated, it would be necessary to add enabling provisions to the Schools Act.

SCHOOL BOARD OPERATIONS

Here again there are three questions which have arisen in discussions to date. First, some have suggested that the provisions for choosing the chairperson of a school board should be reviewed and adjusted. Second, suggestions have been received that the requirement that school boards meet monthly be reviewed, particularly in view of the summer recess. Finally, the question has been raised as to what the Schools Act should enable or require in regards to the procedures used by school boards in order to carry out their business.

Choosing School Board Chairpersons

Under present statutory provisions, school boards take office on July 1st (in election years) and are required to have a regular meeting before July 15. The Act requires that as a 'first order of business' at that first regular meeting the board shall 'elect a chairman and vice-chairman from among the members of the board. The Act is silent as to whether the chairperson is elected by a majority vote of all trustees, or by a majority vote of those present. It also makes no reference to the length of the chairperson or vice-chairpersons term.

One suggestion which has been received is that school boards should not choose their chairperson or vice-chairperson until the second regular meeting of the school board. This

is based on the idea that new trustees may need at least one meeting, and more than a few days, in order to make up their minds as to who among their colleagues should be chosen as chairperson.[9] Others suggest that this is not sufficient reason to change the Act, suspecting that there is no particular advantage to delaying the choice of a chairperson.

Should this provision be changed as suggested above, it would also be necessary at least to establish a practice to provide for the chairmanship of the first meeting of a new school board. Some have suggested that a superintendent might appropriately fill this role; others would prefer to see a chairperson selected on an ad hoc basis, with the role perhaps being fulfilled by a returning member of the school board.

A suggestion has also been made that a majority of trustees, rather than a majority of those present, should be required to elect a chairperson or vice-chairperson. This is seen as an additional protection, particularly in the case of small school boards, to ensure that a chairperson has sufficient support from Board members.

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9. In this section it is assumed that the idea of an 'at-large' election for School Board chairpersons is not pursued.

Different opinions arise as to the length of a chairperson or vice-chairperson's term. Most believe that the choice of chairperson or vice-chairperson is subject to review by the school board which chooses them at any point in time. Some would suggest that the election of a chairperson or vice-chairperson implies a three-year term, because this is the length of time of a school board's term of office.

There are several suggestions for clarifying this question. Some suggest that a revised Schools Act should specify fixed terms of one year. Others suggest that the law should spell out the right of a school board to periodically review and if it so deems fit, change its choice of chairperson and vice-chairperson. Others suggest that the Schools Act should make it clear that school boards should or may establish their own formal policies on this matter.

Frequency of School Board Meetings

The Schools Act presently requires that School Boards meet every month. Some school boards see this as inappropriate, given that there is a two-month summer recess. Some have had trouble obtaining a quorum for summer meetings. Advocates of regular summer meetings suggest that they are necessary in order to review the progress of the year just completed, and ensure adequate planning for the year which is about to begin. Others suggest that at least

one summer meeting should not be necessary.

No suggestions have been received to the effect that the requirement to meet monthly when school is in session be changed.

School Board Procedures

The Schools Act is very specific in some ways about the procedures by which school boards should do business. A question which should be answered during the revision of the Schools Act is to what extent the Schools Act should detail or provide for procedures for doing school board business.

Present statutory provisions are inconsistent. They provide, for example, for a very detailed process for presenting motions in writing at meetings. At the same time, although the Act refers to the duties and powers of the chairperson of the school board, these powers are not defined.

It may not be necessary to set out in detail in statute law how school boards should go about conducting business at their meetings. It is, however, reasonable to at least foresee by regulation or other means standards for doing school board business. It would seem reasonable to require that school boards adopt and use some form of generally accepted procedure for dispatching business in democratic assemblies (e.g. Roberts rules, Le Code Morin). It would also seem reasonable to establish, if not by statute law then by regulation, general guidelines concerning the role

of a school board chairperson and vice-chairperson. These matters should be addressed when revising the Schools Act.

PUBLIC ACCOUNTABILITY

The Schools Act presently includes a number of provisions to ensure that there is public accountability for the school system. This is important given the complexity and scope of today's schooling.

For example, the Schools Act requires that school board meetings be public. Although it would certainly be reasonable to ensure that matters directly affecting individuals, for example, are discussed to the extent possible in private, there seems to be concensus that the general rule of requiring school board meetings to be open to public scrutiny should remain.

Similarly, although some detailed reporting requirements might be made somewhat more general, it does seem reasonable that the Schools Act should continue to require that annual reports, such as a consolidated financial statement for each school board, should be public, and that the minutes, motions, resolutions, contracts and accounts of school boards and school districts should continue to be open to inspection by qualified voters of that school district.

An earlier section of this paper deals with the issue of confidentiality of student records. A later section touches on the need for confidentiality in discussing some personnel matters.

PART V: SCHOOL SYSTEM EMPLOYEES

In addition to dealing with matters regarding students, their parents, and the organization and operation of schools and school boards, the Schools Act has traditionally included some provisions concerning the conduct, responsibilities, and terms and conditions of employment of school board employees.

The Schools Act has also not been revised since the introduction of collective bargaining for School Board employees. Particularly in the case of teachers, there are provisions on similar matters in the Schools Act and in the teachers' collective agreement. There are also provisions which permit standards of conduct to be established for school system employees, particularly teachers, by Regulation.

Three questions receive attention in this part of this paper. First, there is the question of non- professional conduct: What provisions are necessary in law in regards to school system employees who behave in ways which might have serious, negative effects on students (e.g. physical and sexual abuse)? Second, what revisions need to be made to the Schools Act in regards to those provisions pertaining to teachers as a result of the development of collective agreements? Finally, what provisions and protections should be in the Schools Act in respect of superintendents and

other non-bargaining personnel, whose job security, terms and conditions of employment are not presently governed by collective agreements under the Public Service Labour Relations Act.

NON-PROFESSIONAL CONDUCT

The term 'non-professional conduct' in the context of this paper, refers to behavior or actions on the part of school personnel which are serious in their potential or probable impact on the physical, emotional or mental health of students. 'Serious behaviors' could be taken in this context to largely comprise criminal behavior vis-a-vis students (e.g. physical or sexual abuse, or dealing in drugs). Although situations involving non- professional conduct are rare in the school system and hopefully will continue to be so, there is concern that the present Schools Act is not sufficiently comprehensive in protecting students from such behaviors.

The Schools Act does include a number of provisions pertaining to teachers, which may be of use in dealing with non-professional conduct. The Act does presently provide that school boards may dismiss teachers 'for cause'. It further provides that the Lieutenant-Governor-in-Council may remove teachers' licences. It also obligates teachers to 'diligently and faithfully teach', and to 'maintain proper order and discipline on school property. Further expectations and legal requirements of teachers are also

included in the School Administration Regulation made pursuant to the Schools Act. The Act also gives teachers a statutory right to appeal dismissal decisions to 'Boards of reference'; however, this practice has been superceded by processes under the Public Service Labour Relations Act, since the advent of collective bargaining for teachers.

CONCERNS

There are a number of areas of concern about the present legislation.

Provisions pertaining to all employees

First, although the Act includes provisions as outlined above covering teachers, very little is said about other school personnel. Certainly when considering serious problems such as physical and sexual abuse, statutory provisions should not be limited to teachers.

Mandatory reporting

Second, incidents are frequently not known beyond the local level, and may in some cases be hidden rather than dealt with, in an effort to avoid embarrassment for all concerned.

This results in the risk that employees who are guilty of non-professional conduct can be rehired by other school boards or in other locations, without knowledge of past problems. Several incidences have been reported in Canada

where teachers went from board to board, having left one or more boards because of physical or sexual abuse offences, only to be rehired by other boards where the same offences were again committed.

Grounds for dismissal or renewal of licenses

Third, dismissal of school personnel is a rare occurrence in relation to such incidents. Removal of licences is even more rare.

This is often because the evidence is less than conclusive. It may also result from confusion between the standards which should apply for conviction for criminal offences, as opposed to those which apply when deciding the appropriateness of continuity of employment in contact with young people.

In regards to criminal convictions, the onus is on the prosecution to prove criminal conduct beyond reasonable doubt. In the latter case, it is sufficient that a school board, as an employer, be convinced that there is sufficient evidence to suggest that an individual should no longer be employed in a capacity where he or she is working with young people.

Protection of employees

Finally, any attempt to tighten legal requirements in respect of non-professional conduct must take into account the protection of those who are falsely accused. Reports of

non-professional conduct are not as rare as actual incidents. It also seems that when one particularly serious incident becomes visible, a rash of other alleged incidents come to light, some of which have little if any substance.

In proposing statutory changes, therefore, it is necessary to ensure that there are sufficient safeguards to protect both the students and the employees. To some extent, the grievance process and the opportunity to sue for wrongful dismissal provide checks against irresponsible action on the part of an employer. However, it would be important to ensure that statutory provisions designed to protect students did not reduce or eliminate the effectiveness of these safeguards.

SOLUTIONS

There are a number of possibilities for solutions to these problems.

First, it seems clear that any revisions to the Schools Act in respect of non-professional conduct should be written in such a way as to ensure that they apply to all adults working for the school system.

Second, it has been suggested that there should be a statutory requirement for mandatory reporting to the Minister of Education of alleged incidents of non-professional conduct. This reporting could include all incidents, or only those incidents related to the dismissal or resignation of school personnel.

A corollary suggestion would require that where school personnel are dismissed as a result of or in relation to incidence of non-professional conduct, there be a mandatory review of any licences or permits which they might hold which enable them to work in the school system. In the case of serious incidents involving teachers, for example, it may be necessary that the school board remove the teacher from employment with that school board, and that the province consider removing the right to teach. A special review Board might be considered for this purpose.

A further suggestion would be to require, by law or policy, mandatory reference checking at the point where school personnel are hired, with a requirement that reference checking include questions designed to reveal whether or not the potential employee had been involved with incidents of non-professional conduct.

In regards to protection of the employee, it would be important to keep all information confidential throughout any period of investigation. This confidentiality should continue, with a possible exception in cases where dismissal action is taken, and it is necessary to record the decision to dismiss along with its reasons in school board minutes. Similarly, revisions to the School Act should ensure that where a person's employment, licence or permit is revoked, there be an effective avenue of appeal.

It may also be reasonable to give employee associations or professional associations a formal role in dealing with

cases of non-professional conduct. Some would argue, for example, that the teachers professional organizations are better placed and well-equipped to deal with these situations, in comparison with government administrative structures. Professional associations in particular are frequently expected to assume the responsibility for policing the standard of conduct of their members.

PROVISIONS PERTAINING TO TEACHERS

As noted earlier, the present Schools Act predates collective bargaining for teachers. At the time the present Act was originally adopted, it was necessary to provide in school law for matters pertaining to the terms and conditions of employment of teachers, including reasonable protection for teachers as related to their job.

Technical changes

There are quite a number of technical changes which may be necessary in order to ensure consistency between the provisions of the Schools Act and the teachers collective agreement.

These matters include a definition of teacher which is consistent with current practices for granting licences and permits, adjustments to the statutory provisions which have to do with how teachers salaries are set, consistency between Section 10 of the Schools Act and Section 57 of the collective agreement concerning the suspension and cancellation of teachers licences; consistency in provisions concerning the continuity of employment between Sections 41 and 47 of the Schools Act and the relevant sections of the collective agreement; and consistency between the provisions in the Schools Act in respect of layoffs and dismissals, notably the differences between Section 50 of the Schools Act and Section 48 of the collection agreement. Each of these areas has been identified by the Teachers' Federation as requiring some consideration. Most of these changes appear to be technical and amount to an updating of our school law.

Confidential discussion of personnel matters

Another matter which the Federation has presented as a concern of teachers is the question of confidential discussions with school boards on personnel matters. The Teachers' Federation points out that the decision to hold an in-camera session to discuss such matters is presently a decision taken by vote of a school board. It is proposed that in the case of personnel matters, the employee should be entitled to have a private session with the school board when his or her situation is being discussed.

Medical certificates

The Teachers Federation has also expressed concerns about the present provisions in the collective agreement and the Schools Act, concerning the presentation of medical certificates. It is the Federation's opinion that teachers can only be required to produce a medical certificate (this is the language of the collective agreement); notwithstanding the section of the Schools Act that presently reads that a school board 'may require a teacher to undergo an examination by a medical practitioner named by the board'.

Omissions

Teachers have also pointed out some concerns with regard to omissions in our school law in regards to students.

For example, there is no provision in our Schools Act which presently would permit the suspension of a student notwithstanding an order under the Young Offenders Act that directs the student to attend school. Similarly, although the Schools Act has provided for making Regulations for the 'health, cleanliness and physical well-being of pupils', no such Regulations have been made. It is suggested that both these areas be addressed in the revision and consolidation of the Schools Act.

Boards of reference

Another subject which requires attention is the question of boards of reference. Section 10 of the Schools Act provides for boards of reference, to which teachers have right of appeal in the event that their permit or licence is suspended or cancelled.

Practically all teachers are now in the NBTF bargaining unit; those who are not are mostly those 'teachers' who meet the legal definition of teacher but are employed as superintendents or assistant superintendents. The process established under the Public Service Labour Relations Act through collective bargaining provide recourse for teachers in the event of their suspension or dismissal. Accordingly, boards of reference are no longer a requirement for teachers who are members of the NBTF bargaining unit.

Precedence of collective agreement

A final matter, and one of considerable concern to teachers, is the relationship between provisions in the collective agreement and provisions in the Schools Act by virtue of Section 56 of the Schools Act. This section provides that insofar as teachers' terms and conditions of employment are concerned, the collective agreement takes precedence over Schools Act provisions.

The existence of this provision is probably the reason why anomalies between provisions of the Schools Act and provisions of the collective agreement have not caused

significant problems. The collective agreement at present clearly takes precedence.

However, during the recent discussions of the potential revisions to the Schools Act, there have been suggestions that Section 56 should be repealed. Proponents of this repeal suggest that it is inappropriate to have a provision in statute law which gives the provisions of a collective agreement precedence over law.

The proposal that Section 56 be repealed is vehemently opposed by the Teachers' Federation. Teachers regard this section as necessary for their job security. They see no need for its repeal, and suggest that the arguments advanced by proponents of repeal weak and without serious foundation.

They further suggest that the section which is currently in the Act is a necessary protection in that it helps to prevent the government from overriding the collective agreement by making statutory changes.

NON-BARGAINING PERSONNEL

Almost all school board personnel are unionized. However superintendents and assistant superintendents continue to be non-bargaining personnel. In recent years, there has been considerable concern on the part of superintendents and their association, particularly as to a lack of job security provisions.

These concerns were reflected in a report on the Legal Status of School Superintendents which was completed in

June of 1983. Among other things, this report suggested that there should be a probationary period for newly appointed superintendents, and that there should be formal requirements for due process and review in the event of termination.

Superintendents argue that protection should be given by statute law against dismissal for reasons not related to performance in employment.[10] They argue that such protection is all the more important because of the nature of their jobs; it is unlikely that a superintendent whose employment is terminated would easily be able to find comparable employment within the province, or perhaps even in other school systems. Superintendents also hold that their jobs are different from those of other non-bargaining public servants (such as civil servants in Part I of the public service), in that they are Chief Executive Officers directly responsible to elected boards.

On the other hand, many trustees, although agreeing with the potential need for some improvement in job security provisions for superintendents, continue to favour arrangements which would allow a school board considerable freedom to remove its superintendent.

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10. In the balance of this section, references to Superintendents may be taken normally to include Assistant Superintendents.

These issues boil down to three questions: Should school law provide that the only legitimate reason for dismissal of a superintendent is 'for cause'? Should superintendents have a probation period and, if so, what should be its terms and conditions? What measures should exist for superintendents who are terminated (e.g. review procedures, or arrangements for reentry to the teaching force)? It may be appropriate to deal with each of these matters in statute law.

Basis for dismissal

The first of these questions is quite clear. If superintendents are given a provision which says that their termination may only be 'for cause', then 'at pleasure' dismissals will no longer exist.

On the other hand, if such a provision is not added, boards will continue to be able to remove their superintendent when they see fit, whether the reasons are directly related to performance or based on other factors (e.g. personality conflicts with members of the board).

There are, however, some alternatives. School law could, for example, require a contract between a school board and its superintendent and stipulate that that contract cover such matters as the basis for termination. Or a provision such as that in the new Civil Service Act could be added for non-bargaining school board employees. The Civil Service Act provides that termination shall be governed by 'the ordinary rules of contract'.

Probation periods

The question of a probation period suggests that new job security provisions would not fully apply until an initial period of time has passed, during which a superintendent would prove his or her suitability on the job, to the satisfaction of the school board.

It is a matter of choice whether or not a probation period is a reasonable requirement for the chief executive officers of school boards. An advantage of introducing a probation period would be that one could introduce complementary provisions providing increased job security for superintendents who have proved their suitability on the job, without those same provisions applying at point of commencement.

Review following dismissal

Another question has to do with what recourse is available to a superintendent if he or she is terminated. At present, it could be argued that superintendents, who are legally 'teachers', have access to the boards of reference established under Section 10 of the Schools Act.

Even if this is so, however, it would be reasonable to review the powers and processes of boards of reference. Boards of reference, for example, have the power to order reemployment. In the case of superintendents, it is questionable whether a board established on an arbitration model is an appropriate review mechanism, and whether it

would be appropriate for such a body to have the power to order reinstatement of employment. It may be sufficient to provide for a formal review of termination when requested by a dismissed superintendent, with a full report from that review being provided in confidence to the superintendent, the school board and the minister.

Re-entry to the teaching force

Finally, there is the question of re-entry to the teaching force for dimissed superintendents.

At present, superintendents must leave the teaching force, losing the job security and seniority protection which they have accumulated as teachers, when accepting the job of superintendent. It is argued that without a right of re-entry for a specified period, this decreases the number of qualified individuals who may be willing to offer for the difficult job of being a superintendent, particularly in situations where the relationship between a superintendent and school board may have been historically difficult. At the same time, a general guarantee of re-entry would require discussion in the context of collective bargaining arrangements.

A FINAL NOTE

As mentioned at the outset, the objective of this green paper has been to present various policy issues which may be addressed in a revised and consolidated Schools Act.

It is hoped that the arguments and issues presented are helpful in ensuring that a revised Schools Act is an appropriate framework for education for the years to come. It should be our objective to produce a revised Schools Act which provides a framework of rules which allows education to progress, including necessary safeguards, but not unnecessary restrictions. If this paper is helpful in designing such an Act, then it will have served its purpose.